

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3430 of 2014

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1. Gauri Shankar Poddar @ Gauri Poddar Son Of Late Banarsi Poddar Resident Of Village Mungeriganj Hiralal Chowk, Ward No. 33, P.S. Nagar, District Begusarai.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Begusarai
3. Sub-Divisional Officer, Begusarai
4. Superintendent Of Police, Begusarai
5. Municipal Commissioner, Begusarai Municipal Corporation, Begusarai
6. Rasmani Devi Wife Of Late Baidhyanath Sah
7. Bishwanath Sah Son Of Late Adhin Sah Both Residents Of Mohalla Mungeriganj, Ward No. 33, P.S. Begusarai, Dist. Begusarai
8. Ashok Kumar Sah Son Of Sri Bishwanath Sah Ad-Hoc Employee Of Begusarai Municipal Corporation, Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Sinha, Adv.

For the Respondent/s : Mr. Subhash Pd. Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-03-2018

Heard learned counsel for the petitioner, learned counsel for the Municipal Corporation, Begusarai and learned counsel for the respondent nos. 6 to 8.

2. In the present writ petition the petitioner has prayed for quashing the notice issued by the Municipal Commissioner, Begusarai, as contained in letter no. 11 dated 04.01.2014 (Annexure-2), by which the respondent no.6 has been directed to vacate the premises of holding nos. 157 and 158 declaring it as a dangerous building. Another prayer of the petitioner is for quashing the order, as contained in Memo No. 67 dated 08.01.2014 (Annexure-3), passed by



the Municipal Commissioner, Municipal Corporation, Begusarai by which the petitioner being a tenant in holding nos. 157 and 158 has been given three days time to vacate the dangerous building for the purpose of its demolition.

3. The contention of the petitioner is that his ancestor, namely, Ram Chandra Poddar owned and possessed the land through settlement from ex-landlord Smt. Shyama Kumari Sahibajee Malik-Ulaw on payment of *salami* and came in exclusive possession over the land bearing Tauzi No. 3518 Thana no. 318, khata no. 42 and 49, khesra nos. 860, 861 and 862 and measuring an area of 8 dhurs. After coming in possession over the aforesaid land, his grand father constructed double storied building over the same and since then his family is residing therein. According to the petitioner, the respondent nos.6 to 8 are his tenants and they are occupying the first floor of the said building on payment of Rs. 600/- per month. Subsequently, the petitioner being in need of the entire premises as the family had become large, he requested the respondent nos.6 and 7 to vacate the premises, which was refused and payment of rent has also been stopped whereafter an eviction suit vide Eviction Suit No. 9 of 2013 has been filed in the court of Munsif 1st, Begusarai on the ground of personal necessity.

4. Learned counsel for the petitioner contended that the impugned order passed by the Municipal Commissioner is bad in law



in view of the fact that no local inspection of the premises was conducted and it is wrong to allege that the building in question is dangerous for living of human being. He submitted that the Municipal Commissioner has maliciously passed the order in collusion with the respondent nos.6 to 8.

5. A counter affidavit has been filed on behalf of the Begusarai Municipal Corporation. It has categorically been stated in the counter affidavit that a fraudulent plea has been taken by the petitioner in the writ petition in order to delay the demolition of old and dangerous building. The petitioner is neither the owner of the building in the records of the Corporation nor is paying holding tax to the Corporation. The holding nos. 157 and 158 stand in the name of respondent no.6. Her name is also mentioned in Register-II and she is paying rent to the State of Bihar. It has further been contended in the counter affidavit that the respondent nos.6 and 7 had also filed a petition for demolition of the building in their share on 06.10.2012 and 28.01.2012 respectively on the ground that the same was too old and had become dangerous for safe living.

6. Learned counsel for the respondent no.5 referring to the various paragraphs of the counter affidavit submitted that after receiving the petitions for demolition of building from the respondent nos.6 and 7, a report was sought for from the Executive Engineer, Building Division, Begusarai and Junior Engineer of the Begusarai



Municipal Corporation. Both of them recommended for demolition of building on the ground that the same was too old and had become dangerous for sale living. He submitted that the Municipal Commissioner, Begusarai while passing the order has taken into consideration each and every aspect of the matter and has rightly exercised his jurisdiction conferred under Section 336 of the Bihar Municipal Act, 2007.

7. Learned counsel for the private respondent nos.6 to 8 while adopting the submissions made by the learned counsel appearing for the Municipal Corporation additionally argued that the entire building in question is owned and possessed by the private respondents. He submitted that though the petitioner has claimed title over the land upon which shops have been constructed but he has not produced any chit of paper in support of his claim. He submitted that the petitioner was inducted as a tenant in the year 1986 and since then he has been doing his business. Since the building is quite old and is not safe for living of human being and, therefore, when a petition was filed before the Municipal Commissioner for demolition of the building an inspection was ordered to be carried by the Executive Engineer, Building Division, Begusarai and Junior Engineer of the Begusarai Municipal Corporation, who having found the building in a ruinous state recommended for its demolition.

8. At this stage, it would be relevant to take note of the fact



that upon hearing the parties, on 20.09.2017 this Court passed the following order :-

“It is agreed between the parties that the petitioner and respondents no. 6 to 8 and/or their representatives shall appear before the respondent no. 5, in his official chamber on 9th October, 2017 at 11.00 A.M. On that day, a date shall be fixed for actual site inspection where the petitioner and respondents no. 6 to 8 and/or their representatives shall also be allowed to be present and also assist. The date for the same would not be later than 13th October, 2017. The respondent no. 5 shall ensure that the inspection team constituted by him shall include an expert and the inspection shall also be done in a scientific manner. The inspection would be carried out and report submitted. The exercise shall also be videographed. A copy of the report shall be given to the respective parties within three working days of the inspection being held.

9. Pursuant to the aforesaid order dated 20.09.2017, the Municipal Commissioner, Begusarai constituted an inspection team. The petitioner and respondent nos.6 to 8 were directed to appear in the official chamber of the Municipal Commissioner on 09.10.2017. By way of an affidavit filed on behalf of the respondent no.5, it has been brought to the notice of the Court that the copy of the aforestated notice dated 23.09.2017 was sent to the petitioner and the respondent nos.6 to 8 but the petitioner refused to receive the same.



However, on 09.10.2017 the petitioner and the respondent nos.6 to 8 appeared before the Municipal Commissioner and agreed that a three men inspection team will inspect the building on 12.10.2017. On 12.10.2017, the inspecting team carried out inspection of the aforesaid building in presence of the petitioner and the respondent nos.6 to 8 and photography and videography of the aforesaid building was also made in presence of the parties. The inspecting team in its report categorically stated that the building in question is completely ruined, rickety, damaged and unsafe. The photographs taken on the spot have also been brought on record, which goes to suggest that the building is totally unsafe for human living. Learned counsel for the petitioner has not disputed the authenticity of the photographs. Having seen the photographs, learned counsel for the petitioner could not dispute the fact that the building is in dilapidated condition. In view of the photographs, it is not necessary to see visual display of the videography of the building conducted on 12.10.2017

10. Section 336 of the Bihar Municipal Act, 2007 confers power upon the Chief Municipal Officer to order removal of dangerous building. It reads as under :-

“336. Power to order removal of dangerous buildings. (1) If any wall or building, or anything affixed thereto, is deemed by the Chief Municipal Officer to be in a ruinous state, or is likely to fall, or to be in anyway dangerous, he shall forthwith cause a



notice, in writing, to be served on the owner and to be put on some conspicuous part of the wall or building or served on the occupier, if any, of the building requiring such owner or occupier forthwith to demolish, repair, or secure such wall, building or thing, as the case may require.

(2) The Chief Municipal Officer may, if it appears to him necessary so to do, cause a proper hoarding or fence or other means of protection to be put up at the expense of the owner of such wall or building for the safety of the public or the inmates thereof; and may, after giving them such notice as the Chief Municipal Officer may think necessary, require the inmates of the building to vacate it.

(3) The provisions of this Act and of any rules or regulations made thereunder relating to buildings shall apply to any work done in pursuance, or in consequence, of a notice issued under sub-section (1).

(4) (a) Notwithstanding anything contained in the foregoing provisions of this section, the Chief Municipal Officer may, forthwith or with such notice as he thinks fit, demolish, repair or secure or cause to be demolished, repaired or secured, any such wall or building or thing affixed thereto, on the report of the Municipal Architect and Town Planner, certifying that such demolition, repair or securing of the building, wall or thing is necessary for the safety of the public or the inmates of the building.

(b) In any such case, the Chief Municipal



Officer may cause the inmates of the building to be summarily removed from such building or from such portion thereof as he may consider necessary.

(c) All expenses incurred by the Chief Municipal Officer for carrying out the purposes of his subsection shall be paid by the owner of such wall, building or thing.

(5) Anything done or any action taken by the Chief Municipal Officer under sub-section (4) shall, unless the contrary is proved, be deemed to have been done or taken lawfully and in good faith.”

11. On perusal of the aforestated provisions prescribed under Section 336 of the Bihar Municipal Act, 2007, it would be manifest that if any building is deemed by the Chief Municipal Officer to be in a ruinous state, or is likely to fall, or to be in anyway dangerous, he shall forthwith cause a notice, in writing, to be served on the owner and to be put on some conspicuous part of the wall or building or served on the occupier, if any, of the building requiring such owner or occupier forthwith to demolish, repair, or secure such wall, building or thing, as the case may require.

13. In the present case, the owners/occupiers have been noticed and in their presence inspection has been carried out. The photographs brought on record clearly goes to suggest that the building is in a ruinous state and is beyond repair. Under such



circumstance, if the Municipal Commissioner has issued direction for vacating the building for the purpose of demolition, no fault can be found with the order impugned.

14. In that view of the matter, I see no merit in this writ petition, it is accordingly dismissed.

15. It is made clear that so far as the question of right, title, possession etc. is concerned, it is to be considered by the civil court of competent jurisdiction and any observation made by this Court in the present order shall have no bearing in any such dispute.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	21-03-2018
Transmission Date	

